HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)
(Chapter VIII, Rule 32(2) (b)

Description of the Case

Appeal From Order No. 49 of 2003
(Old No. 65 of 1990)

Smt. Dharmawati Devi
W/o Late Shri Karan Singh
& others ...Appellants

Vs

Gurcharan Singh & another ...Respondents

Approved for Reporting.

~~Not Approved for Reporting~~

Date of Decision 26th June, 2006

Initial of Judge.

(P.C. Verma, J.)

(B.C. Kandpal, J.)

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Appeal From Order No. 49 of 2003
(Old No. 65 of 1990)

1. Smt. Dharmawati Devi
   W/o Late Shri Karan Singh
2. Km. Madhu
3. Km. Mamta
4. Km. Manju
5. Km. Renu
   All D/o Late Sri Karan Singh
6. Master Tarun S/o Late Sri Karan Singh
   All R/o Jaspur,
   District Nainital ...Appellants

Versus

1. Gurcharan Singh
2. Swaran Singh
   Both S/o Kundan Singh
   R/o Amiyawala Kashipur
   P.S. Jaspur, Nainital ....Respondents

Sri Jitendra Chaudhary holding brief of
Sri S.K. Mandal, learned counsel for the appellant.
Sri B.S. Parihar, learned counsel for the respondents,

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

This appeal has been preferred by the appellants against the judgment and order dated 21.02.1990 passed by the Motor Accident Claim Tribunal, Nainital (hereinafter referred as 'the Tribunal') in Motor Accident Claim No. 41 of 1981, Smt. Dharamawati Devi & others Vs Gurucharan Singh & others, whereby the claim petition was dismissed by the 'the Tribunal'

2. Brief facts of the case are that on 25.11.1980, at about 01:30 p.m. Karan Singh was standing on the Kachhi Patri of road near the east of Lok Bastra Ekkai Haripara and persuaded the farmers not to supply sugarcane to the factory. One tractor bearing registration No. UTF 6339 driving by

Gurcharan Singh – Opposite party No. 1 in a very rash and negligent manner came there and crushed the deceased. The claimant claimed Rs. 15,00,000/- as compensation. At the time of accident, the deceased was a practicing lawyer. He was aged of 46 years and his professional income was Rs. 1,000/- and by agriculture and other income comes to Rs. 5,000/-. The deceased was a promising practicing lawyer and was income tax assessee. Therefore, the claimants filed a claim petition before the Tribunal concerned in lieu of the death of Karan Singh.

3. The owners/respondents filed their written statement in the claim petition before the Tribunal concerned alleging therein that the petition for compensation was misconceived and was based on wrong facts and allegations. The respondents also alleged that the deceased was not a practicing Advocate and highly exaggerated income has been shown by the claimants. It was also alleged that the deceased at the time of accident was 55 years of age and he was sick person having very short expectancy of his life. He never looked after the agriculture farm. The Insurance Company also disputed the jurisdiction of the Tribunal to try the claim petition. The accident was occurred due to the fault of the deceased and the claim petition was liable to be dismissed.

4. The opposite party No. 3 – Insurance Company contested the case by filing written statement stating therein that the Insurance Company is not liable to pay any amount of compensation and that the vehicle alleged to be involved in the accident was not being driven by the person holding a licence and the tractor was insured for compensation risk for Rs. 1,50,000/- only. The claim petition was not maintainable under law as the death of the deceased – Karan Singh was

caused by an intentional act of committing his murder by the driver of the tractor who was planning to murder the deceased for the last several days preceding the incident. It was also alleged that the death of Karan Singh was not the result of any accident of the motor vehicle but the offending tractor was used for commission of murder of the deceased; hence the Insurance Company is not liable to pay any compensation.

5. On the pleadings of the parties, the Tribunal framed following issues:-

1. Whether the tractor No. UTF 6339 was being driven by Gurucharan Singh respondent No. 1 or by Gurnam Singh driver on 25.11.1980 at 01:30 p.m. near Lok Vastra Ikai Haripura, P.S. Jaspur? Its effects?
2. Whether the accident in question resulting in the death of Karan Singh occurred due to rash and negligent driving of the tractor in question by its driver? Its effect?
3. What was the age of the deceased?
4. Whether the deceased was a practicing lawyer? If so, its effect?
5. To what amount of compensation, if any, are the claimants entitled and against whom of the respondents?
6. Whether the driver of the tractor in question did not hold a valid driving licence? If so, its effect?
7. Whether the death of the deceased was not the result of the accident in question and this tribunal has no jurisdiction to try this Petition?
8. Whether the Insurance Co., is not liable to pay any compensation as alleged in Para 15 of the amended

written statement of Opposite Party No. 3, Paper No. 18B?

9. Whether the accident of the deceased has been caused with the intention of committing murder and this tribunal has no jurisdiction to try the petition as alleged in Para 12 and 14 of the amended written statement of Opposite Party No. 3, Paper No.18B?

6. In support of their claim petition the claimants examined P.W.1 Smt Dharmawati, P.W.2 Baboo Singh and P.W. 3 Shyam Singh and filed documents. The opposite parties examined D.W. 1 Hari Singh and filed documents.

7. After hearing learned counsel for the parties and perusing the entire material on record, the Tribunal dismissed the claim petition.

8. Feeling aggrieved by the aforesaid impugned judgment and award, the appellants/claimants have filed the appeal before this Court.

9. Heard learned counsel for the parties and perused the record.

10. Learned counsel for the appellant has argued that the judgment and award passed by the Tribunal is against the weight of the evidence on record as the Tribunal has passed the impugned order on the basis of wrong appreciation of the provision of law. It has also been submitted that the judgment passed by the criminal court has no binding effect to the findings to be recorded by the Tribunal in summary trial. As it is undisputed that the deceased succumbed to injuries by the

offending tractor being driven by the respondent No. 1 and the said tractor was insured with National Insurance Company.

11. It reveals from the perusal of the record that the learned Tribunal has dismissed the claim petition on the basis of this fact that the deceased Karan Singh was hit by the tractor which was being driven by his driver and hitting Karan Singh by the tractor was an intentional act. Therefore, a First Information Report pertaining to the murder of Karan Singh was lodged at police station and in the Sessions Trial, the accused was convicted for having committed the offence of murder. Therefore, the Tribunal further held that accident was not the result of rash and negligent driving of the tractor and hence, the claimants are not entitled to any compensation under the provision of Motor Vehicle Act.

12. From the bare perusal of the provision of Motor Vehicle Act, we do not find ourselves in agreement with the findings recorded by the Tribunal as Law of Torts is a developing law. The concept of 'strict liability', 'absolute liability' and 'fault liability', give rise to action in tort. The difference has been explained by Their Lordships of the Supreme Court in case of ***Jay Laxmi Salt Works (P) Ltd. Vs State of Gugarat, reported in 1994 ACJ 902,*** between 'strict liability', and 'fault liability' arises from presence and absence of mental element. A breach of legal duty willfully or deliberately or even maliciously is negligence emanating from fault liability but injury or damage resulting without any intention yet due to lack of foresight, etc, is strict liability. Since the duty is the primary yardstick to determine the tortious liability its ambit keeps on widening on the touchstone of fairness, practicality of the situation etc. Their Lordships further observed that truly speaking, entire Law of

Torts is founded and structured on morality that no one has a right to injure or harm others intentionally or even innocently. Therefore, it would be primitive to class strictly or close finally the ever expanding and growing horizon of tortuous liability.

13. The Apex Court in case of ***Gujarat State Road Transport Corporation, Ahmedbad Vs Ramanbhai Prabhathai & another reported in AIR 1987 SC 1690*** has considered the provisions of Section 92A of the Motor Vehicle Act, 1939 (hereinafter referred to as 'the 1939 Act'). Their Lordships held that in any claim for compensation under Sub-section (1) of Section 92A of the 1939 Act, the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person. An interim relief has been granted under Section 92-A *ibid* to the legal representatives of the victims who have died on account of motor vehicles accidents. They could claim Rs. 15,000/- without any proof of negligence on the part of the owner of the vehicle or of any other person. This part of the Act is clearly a departure from the usual common principle of law that a claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming any compensation for the death or permanent disablement caused on account of a motor vehicle accident. To that extent the substantive law of the county stands modified.

14. Section 140 of the 1988 Act is the parimateria provision to Section 92A of the 1939 Act providing for liability to pay compensation in certain cases on the principle of no fault. The requirement being "death or permanent

disablement of any person has resulted from any accident arising out of the use of a Motor vehicle", an amount of interim award under Section 140 of the 1988 Act on account of 'no fault liability' has been enhanced from Rs. 25,000/- to Rs. 50,000/-.

15. Section 161 for the 1988 Act makes special provisions for compensation in case of hit and run motor accident. Further statutory change has taken place in the Motor Vehicle Act, 1988 by insertion of Section 163-A which provides as under:-

> ***"163A Special provisions as to payment of compensation on structured formula basis-*** *(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.*
>
> *Explanation – For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).*
>
> *(2) In any claim for compensation under sub-section (1) the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the Vehicle concerned or of any other person.*

(3) The Central Government may, keeping in view the cost of living by notification in the Officer Gazette, from time to time amend the Second Schedule.

16. The Hon'ble Apex Court in case of ***Gujarat State Road Transport Corporation, Ahmedabad Vs Ramanbhai Prabhatbhai & another (supra)*** has laid down thus:-

"Section 92-A of the Act provides that where the death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of the said section. The amount of compensation which is payable thereunder in respect of the death of any person is a fixed sum of fifteen thousand rupees and the amount of compensating payable under it in respect of the permanent disablement of any person is a fixed sum of seven thousand and five hundred rupees. Sub-section (3) of Section 92A of the Act provides that in any claim for compensation under Sub-section (1) of Section 92A, the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person. It is thus seen that to a limited extent relief has been granted under section 92A of the Act to the legal representatives of the victims who have died on account of motor vehicle accidents. Now they can claim Rs. 15,000/- without proof of any negligence on the part of the owner of the vehicle or of any other person. This part of the Act is clearly a

departure from the usual common law principle that a claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming any compensation for the death or permanent disablement caused on account of a motor vehicle accident. To that extent the substantive law of the country stands modified."

17. The Hon'ble Apex Court in case of ***Shivaji Dayanu Patil Vs Vatschala Uttam More, reported in AIR 1991 SC 1769*** has laid down that "*the expression "arising out of" has a wider connotation as compared to the "accident caused." The expression "arising out of" has been used in Section 165, 163A and section 140 of the 1988 Act. There is departure from the previous Act of 1939 in which under Section 95(1)(b)(ii) the expression used was "caused by". The words used in Sections 140, 163A and 165 the Apex Court laid down that use of expression 'arising out of" indicates that for the purpose of awarding compensation under Section 92A of 1939 Act the causal or permanent disablement is not required to be direct and proximate and it can be less immediate. This would imply that accident should be connected with the use of the motor vehicle but the said connection need not be direct and immediate. This construction of the expression "arising out of the use of motor vehicle" in Section 92A of the 1939 Act enlarge the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment."*

18. In the instant case, it is clear from the allegation made in the claim petition as well as the evidence available on record that the murder was not originally intended. Even if it is a case of murder having the intention or knowledge, it was definitely an accidental murder arising out of use of motor vehicle. Thus the claim petition was clearly maintainable

before the Claim Tribunal and the Tribunal has erred in holding that it has having no jurisdiction to entertain the claim petition.

19. In the case at hand it is quite clear that the death was caused by the act of driver which cannot be said to be designed by the deceased as in view of the facts of the case, the intention, which is hidden in the mind is not of much significance, as the murder was not the main act contemplated. It was clearly a case of accidental death/murder as averred in pleadings as well as evidence adduced by the parties. Hence, the claim petition was trible by Claims Tribunal under the provision of Motor Vehicles Act, 1988 and it could not be dismissed at threshold.

20. We have no hesitation to come to the conclusion that from the material available on record a case of accidental death/murder is made out. Thus the claim tribunal has a jurisdiction to try the case and the observations recorded by the Tribunal with regard to the maintainability of the claim petition is sustainable. Thus the dismissal of the claim petition at the outset is bad in law. The impugned judgment and award is accordingly not sustainable.

21. In view of the above, we allow the appeal and set aside the impugned judgment and award dated 21.02.1990 passed by the M.A.C.T., Nainital in M.A.C. No. 41 of 1981. It is directed that the claim tribunal shall deal with the matter afresh and decide the same on merit after recording the evidence.

22. As the matter is quite old, therefore, it is desirable that the matter be decided expeditiously and preferably within a period of three months

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

June 26, 2006
ASWAL